

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAMMU BENCH, JAMMU**

Hearing through video conferencing



**T.A.62/07074/2020 (SWP.No.1628/2016)**

This the 16<sup>th</sup> day of February, 2021

**HON'BLE MR. JUSTICE L. NARASIMHA REDDY, CHAIRMAN  
HON'BLE MR. MOHD JAMSHEDE, MEMBER (A)**

Rafiq Hussain Paswal, Age 41 years, D/o Qumar-Din-Paswal, R/o Check Saidpora, Tehsil and District Shopian Kmr..

.....Applicant  
(By Advocate: S.H.Thakur - **Not Present**)

**Versus**

1. State of Jammu and Kashmir, through Financial Commissioner, Home Department, Government of J&K, Civil Secretariat, Srinagar/Jammu.
2. Director General of J&K Police, PHQ, Indra Ghandhi Airport Road, Peer Bagh, Srinagar.
3. Sr. Superintendent of Police (SSP), District Shopian, Kashmir.
4. Add. Superintendent of Police (ASP), District Shopian, Kashmir.
5. Station House Officer (SHO), Police Station Shopian Kmr.

.....Respondents  
(Advocate:-Mr. Sudesh Magotra, Deputy Advocate General)

**O R D E R**  
**[O R A L]**

**Justice L. Narasimha Reddy, Chairman: -**

The applicant was employed as Guard in the Establishment of District Police, Shopian. Himself, 5 other Guards and one SPO, were posted on guard duty at the Mini Secretariat Building, Shopian. On 04.09.2016, the miscreants attacked the Mini Secretariat premises. All of them were placed under suspension by alleging that they failed to protect the premises, when miscreants attacked the same and set it ablaze. Thereafter, FIR No.288/2016 under various provisions of law was also registered. The regular disciplinary proceedings were initiated against all the six Police officials, including the applicant. On denial of charge, an Inquiry Officer (IO) was appointed. In his report, the IO recommended the punishment of dismissal against the applicant and one Surgeant Constable, Mohd. Rafiq, and Constable Mohd. Yaseen. Against one Surgeant Constable and 3 other constables, he recommended the punishment of forfeiture of annual increment for a period of 3 years. The Disciplinary Authority (DA), took the report into account, and passed an order dated 17.11.2016 imposing the punishment, as suggested by the IO. The applicant filed SWP No. 1628/2016 before the Hon'ble High Court of Jammu and Kashmir, feeling aggrieved by the order of dismissal.

2. The applicant contends that there was a serious threat to the safety of the building and though a request was made for deployment of more Forces, the same was not taken into account by the Administration. He contends that the building was attacked by huge mob of thousands of unruly persons and there was not much, the Constables could do about it.

3. The respondents filed a reply. It is stated that the applicant and other Guards deployed at the place, have miserably failed to protect the premises. It is also stated that on account of the lack of devotion on the part of the applicant and others, huge loss was caused to the public property.

4. The applicant filed a rejoinder.

5. The SWP has since been transferred to this Tribunal in view of re-organisation of the State of Jammu and Kashmir and renumbered as TA No.7074/2020.

6. There is no representation on behalf of the applicant. We heard Mr. Sudesh Magotra, learned Deputy Advocate General for the respondents.

7. An unfortunate incident has taken place in the Kashmir region, on 04.09.2016. There exists a Mini Secretariat i.e., Headquarters of the District at Shopian. The applicant, Sugent Constables, some Constables and an SPO, were posted on duty. The allegation against the applicant is that he remained absent when the incident took place. In the same proceedings, it is mentioned that the others, who were on duty, have meekly surrendered and left the place, even while leaving their arms and ammunitions. That there was a serious lapse on the part of the entire team of Guards deployed at the place, is beyond any pale of doubt. Even when a mob had attacked, they could have fired the bullets in the air in order to threaten the mob. Simply, leaving the place and making the arms and ammunitions available to the miscreants is a form of gross negligence of their duties.

8. A common set of disciplinary proceedings were initiated against the 2 Surgent Constables and 4 Constables. The IO was supposed to submit

a report, recording his finding on the charges framed against the delinquent officers in common or individually. However, he proceeded a step further and recommended the punishment of different kinds. He suggested the dismissal of the applicant and another constable, by name Mr. Mohd. Yaseen, and the punishment of forfeiture of annual increment for a period of 3 years against one Surgeon Constable and 3 Constables. No specific reason was mentioned in this behalf.

9. Be that as it may, it was not a part of the duty of the IO to suggest punishment. That was purely in the realm of the DA. Even where an unsolicited suggestion is given by the IO, the DA was required to apply his mind independently. A perusal of the impugned order discloses that he has simply accepted the recommendations of the IO. He was required to satisfy himself as to the measure of punishment, that was required to be imposed against the individual officers. Further, when no differentiating factors are indicated, imposition of punishment of dismissal against the applicant, becomes difficult to be sustained. Even from the facts narrated in the impugned order or in the counter affidavit, we do not find any differentiating factors as to the level of negligence attributed to the applicant on the one hand, and the other constables, on the other hand.

10. We are of the view that the applicant deserves to be treated in the same manner as were one Surgeon Constable and 4 Constables, duly denying him the back wages.

11. We, therefore, partly allow the T.A. and set aside the punishment of dismissal imposed on the applicant. Instead, the punishment of forfeiture of annual increment for a period of 3 years stands imposed against him. The applicant shall not be entitled to be paid any back

wages from the date of order of dismissal till the date of reinstatement. The manner in which the period of suspension be treated, shall be the same as in the case of the other four officials. There shall be no order as to costs.

**(MOHD JAMSHED)**  
**MEMBER (A)**

**(JUSTICE L. NARASIMHA REDDY)**  
**CHAIRMAN**

/Sunil/Jyoti/Dsn/vb/